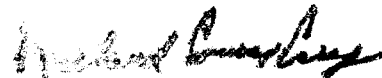


¹ Plaintiff also claimed that Defendants failed to provide him with adequate medical care while he was incarcerated at Green Haven; the Court dismissed Plaintiff's medical-care claim with prejudice on October 3, 2003.

In a Report and Recommendation dated April 15, 2005 ("Report"), Magistrate Judge Theodore H. Katz recommended that Defendant's motion for summary judgment be granted and that Plaintiff's excessive-force claim against Defendants be dismissed with prejudice. In conformity with United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997), Federal Rule of Civil Procedure 72(b), and the Federal Magistrates Act, 28 U.S.C. § 636(b)(1), Judge Katz explicitly cautioned that any objections to the Report were to be received within 10 days, and that failure to file timely objections to the Report would constitute a waiver of any objections. As of the date of this Order, the Court has not received any objections to the Report. A court may adopt those portions of a magistrate judge's report and recommendation that are not the product of clear error and to which the parties do not object. Pizzaro v. Bartlett, 776 F. Supp. 815, 817 (S.D.N.Y. 1991); see also 28 U.S.C. § 636(b)(1).

Having carefully reviewed the file in this matter, the Court is satisfied that there is no clear error on the face of the Report. The Court agrees that (1) administrative remedies were available to Plaintiff; (2) Defendants are not estopped from raising a non-exhaustion defense; and (3) no special circumstances justify Plaintiff's failure to exhaust. See Hemphill, 380 F.3d at 686-91. Accordingly, the Court accepts and adopts the Report in its entirety. Defendant's motion for summary judgment is **GRANTED**, and Plaintiff's excessive-force claim against Defendants is dismissed with prejudice. The Clerk of the Court is directed to close the case and to remove it for the Court's active docket.

So Ordered: New York, New York
June 28, 2005



Richard Conway Casey, U.S.D.J.